

The preliminary hearing Order should be affirmed. The sole issue presented to the Board is whether claimant injured himself while working for respondent on May 7, 2002. On that date, claimant was sent out to put up billboards and late that morning returned to respondent's offices. Upon arriving, claimant appeared to have a stiff neck and he was favoring his left arm. As claimant does not speak very much English, he motioned that he was injured while brushing paper with glue. Respondent's witnesses testified that other than claimant's motioning, they were unable to obtain the details of how the alleged injuries occurred. Respondent immediately sent claimant for medical treatment.

Claimant testified that on May 11, 2002, he began having right upper extremity symptoms. On approximately May 16, 2002, claimant began working part-time for a company cleaning bathrooms and emptying trash.

On May 21, 2002, claimant sought chiropractic services from Rusnak Chiropractic Clinic. Office notes from that date indicate claimant was injured when a "[l]adder slipped while hanging billboard." The office notes also state "[t]wisted neck & back. Numbness down Rt arm & leg. Started on the left side but has moved to the right."

Finally, the record contains even another history of how claimant's accident happened. Records from St. Francis Hospital and Medical Center dated May 23, 2002, contain a history that claimant's injury occurred when he was lifting and moving a ladder.

Judge Avery has observed claimant testify on two occasions. At the July 1, 2002 preliminary hearing, claimant described the accident as follows:

Q. (Ms. Foerster) What happened to you on May 7th of 2002 at Lamar?

THE INTERPRETER: I went by on 75 Highway to the casinos to put up posters, and when I got up the ladder on the advertising the ladder just slipped over a little bit.

Q. What were you doing with your arms at the time?

THE INTERPRETER: I was putting [on] the advertising.

Q. When you are talking about putting on the advertising, are you putting it on a billboard?

THE INTERPRETER: Yes. Just like a frame, a big frame that I put the advertising posters on.

Q. What if anything did you feel?

THE INTERPRETER: I just felt sharp pain on my shoulder. When I was -- when I was putting half of the advertising I couldn't move my -- my left hand, and then when I was done with that first poster, since I had four more to put up this was bothering me too much, and since -- since it kept bothering me in my arm I called my supervisor.¹

The Judge found claimant's testimony credible and awarded him preliminary hearing benefits. Giving deference to the Judge's assessment of claimant's credibility, the Board also concludes claimant sustained the injuries in question as a result of the alleged May 7, 2002 accident. Accordingly, the Board concludes claimant injured himself when a ladder slipped while he was putting up advertising on a billboard. Claimant is entitled to receive a preliminary hearing award of medical treatment and disability benefits under the Workers Compensation Act.

WHEREFORE, the Board affirms the August 28, 2002 preliminary hearing Order entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of October 2002.

BOARD MEMBER

c: Beth Regier Foerster, Attorney for Claimant
Gregory D. Worth, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Director, Division of Workers Compensation

¹ P.H. Trans. at 7-8 (July 1, 2002).